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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,120	02/08/2001	Gregory L. Schaffer	055123.P086R	1677

7590                    11/18/2002

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[REDACTED] EXAMINER

BERHANE, ADOLF D

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

2838

DATE MAILED: 11/18/2002

X#23

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/781,120

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DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on \_\_\_\_\_  
 This action is FINAL.  
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-22, 24-32 and 34-65 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 1-22, 24-32 and 34-65 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

## DETAILED ACTION

### ***Allowable Subject Matter***

1. Applicant is advised that the Notice of Allowability mailed on June 11, 2002 and the Supplemental Notice of Allowability mailed on September 20, 2002 are vacated.
2. This application is objected to under 37 CFR 1.172(a) as the assignee has not established its ownership interest in the patent for which reissue is being requested. An assignee must establish its ownership interest in order to support the consent to a reissue application required by 37 CFR 1.172(a). The assignee's ownership interest is established by:
  - (a) filing in the reissue application evidence of a chain of title from the original owner to the assignee, or
  - (b) specifying in the record of the reissue application where such evidence is recorded in the Office (e.g., reel and frame number, etc.).

The submission with respect to (a) and (b) to establish ownership must be signed by a party authorized to act on behalf of the assignee. See MPEP § 1410.01.

An appropriate paper satisfying the requirements of 37 CFR 3.73 must be submitted in reply to this Office action.

3. The reissue oath/declaration filed with this application is defective because the error, which is relied upon to support, the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414.

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Although the statement of error in the declaration filed 8/28/02 is directed to a specific limitation in original claim 10, it does not indicate how the limitation it renders the patent wholly or partly invalid or inoperative. Therefore, the statement cannot be accepted to satisfy the requirement of rule 37 CFR 1.175(a) (1). See MPEP 1414, item II.

Additionally, as this is a broadening reissue application, the declaration filed 8/28/02 cannot be accepted because it was not signed by the inventors pursuant to 35 USC 251 third paragraph, and 37 CFR 1.172.

4. Claims 1-22, 24-32, and 34-65 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

5. The amendments filed 11/29/01 and 1/30/02 proposes amendments to claims 22, 24-32, and 34-65 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required.

Specifically, the amendments filed don't incorporate the marking required by 37 CFR 1.173(d). As such, a paper correctly presenting a) amended original patent claim 10 with appropriate bracketing and underlining and b) new amended reissue claims 22, 24-32, and 34-65 underlined entirely. See 37 CFR 1.173 and MPEP 1453 Additionally, the proposed drawing correction filed January 30, 2002, is informal because the amended drawing figures 2a, 2b, 2c and 2d are not designated as

AMENDED. See CFR 1.173(c) and MPEP 1453. Therefore, a paper correctly presenting amended figures 2a through 2d must be submitted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adolf Berhane whose telephone number is 703-308-3299. The examiner can normally be reached on 10-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Sherry can be reached on 703-308-1680. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0658.



Adolf Berhane  
Primary Examiner  
Art Unit 2838

Adb  
November 7, 2002